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Filing date: **11/26/2013**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91211687
Party	Plaintiff River Light V, L.P.
Correspondence Address	SAFIA A ANAND OLSHAN FROME WOLOSKY LLP PARK AVENUE TOWER, 65 EAST 55TH STREET NEW YORK, NY 10022 UNITED STATES mgrieco@olshanlaw.com, sanand@olshanlaw.com, enunn@olshanlaw.com
Submission	Other Motions/Papers
Filer's Name	Mary L. Grieco
Filer's e-mail	mgrieco@olshanlaw.com
Signature	/mary grieco/
Date	11/26/2013
Attachments	Motion for Reconsideration of the Board's 103013 Order 9122687.pdf(922973 bytes)

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

In the Matter of Trademark Application No. 85/645,701



For the Mark:

Date Published: January 22, 2013

RIVER LIGHT V, L.P.,

Opposer,

v.

ANNE SOPHIE, INC. DBA EMPERIA

Applicant.

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Opposition No.: 91211687

MOTION FOR RECONSIDERATION OF THE BOARD'S OCTOBER 30, 2013 ORDER

PLEASE TAKE NOTICE that upon the accompanying Memorandum of Law In Support of the Motion, River Light V, L.P. ("Opposer"), moves the Board to Reconsider its October 30, 2013 Order Setting Aside the Default against Applicant and Resetting the Trial Dates in the Opposition, pursuant to TBMP ¶ 518.

Dated: November 26, 2013

OLSHAN FROME WOLOSKY LLP

By:

Mary L. Grieco

Safia A. Anand

Park Avenue Tower

65 East 55th Street

New York, New York 10022

(212) 451-2300

Attorneys for Opposer

CERTIFICATE OF SERVICE

I hereby certify that on this day, November 26, 2013, a true and correct copy of the foregoing document entitled:

MOTION FOR RECONSIDERATION OF THE BOARD'S OCTOBER 30, 2013 ORDER

was served upon Applicant's Counsel by prepaid, first class U.S. mail, addressed as follows:

Cameron A. Hopkins, Esq.
Law Offices of Cameron A. Hopkins, PC
865 S. Figueroa Street, Suite 1388
Los Angeles, California 90017

Anna Bivona
ANNA BIVONA

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

In the Matter of Trademark Application No. 85/645,701



For the Mark:

Date Published: January 22, 2013

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RIVER LIGHT V, L.P.,	:
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Opposer,	:
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v.	:
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	Opposition No.: 91211687
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ANNE SOPHIE, INC. DBA EMPERIA	:
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Applicant.	:
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**MOTION FOR RECONSIDERATION OF THE BOARD'S OCTOBER 30, 2013 ORDER
AND OPPOSITION TO MOTION TO SET ASIDE ENTRY OF DEFAULT**

Opposer River Light V, L.P. ("Opposer") submits this memorandum of law in support of its Motion For Reconsideration of the Board's October 30, 2013 Order Setting Aside the Default and Resetting the Trial Dates (the "October 30 Order") ("Opposer's Motion") and in opposition to Applicant's Motion to Set Aside an Entry of Default (the "Motion").

**OPPOSER'S MOTION FOR RECONSIDERATION OF
THE BOARD'S OCTOBER 30, 2013 ORDER**

On October 15, 2013, Applicant made a Motion to Set Aside the Default. Pursuant to TBMP ¶ 502.02(b), Opposer's opposition to the Motion was due 15 days from the date of service of the motion, plus 5 days if service of the motion was made by first class mail, Express Mail or overnight courier. See TBMP ¶ 502.02(b). Applicant filed its motion on October 15, 2013, and served Opposer with the Motion by first class mail. Therefore, Opposer had 20 days to respond to the motion – until November 4, 2013. Opposer planned to oppose the Motion; however, at

10:09 am on the morning of October 30, 2013, Opposer received notice that the Board had entered an order setting aside the default and resetting the trial dates.

The October 30 Order was entered prematurely and Opposer should have been given time to oppose the Motion. Instead, the Board issued the October 30 Order prior to the deadline to oppose the Motion. As such, Opposer now respectfully requests that the Board reconsider the October 30 Order and consider Opposer's opposition to the Motion, set forth below.

OPPOSER'S OPPOSITION TO APPLICANT'S MOTION TO SET ASIDE THE DEFAULT

The Motion should be denied as Applicant and Applicant's failure to file an answer was due to willful or gross neglect. Applicant was aware that Opposer was likely to file a Notice of Opposition as the parties were in settlement discussions, yet the matter had not settled. Indeed, Applicant consented to additional time for Opposer to oppose the application when such consent was necessary. If Applicant did not receive the Notice of Opposition, which is unlikely, Applicant should have certainly checked online to determine if such an action was filed against it as no settlement had yet been reached. Instead, Applicant chose to ignore the Notice of Opposition sent by Opposer, as well as the Notice of Opposition and discovery dates sent by the Board, both of which were sent to the Applicant's address on its trademark application. It was not until Applicant learned that a default was to be entered against it that it chose to act and try to set aside the entry of default. This behavior does not meet the requirement that Applicant show good cause to set aside the entry of default, and therefore, the Motion should be denied.

FACTS

Applicant was or should have been fully aware of this opposition and chose to delay responding to Opposition until the last minute.

On June 7, 2012, Anne Sophie, Inc. dba Emperia, filed an application for the following T

Logo **T** in Class 18 for “Backpacks, book bags, sports bags, bum bags, wallets and handbags; Fitted protective covers for handbags, briefcases, valises, suitcases, and briefcase-like portfolios; Handbags, purses and wallets”, Serial No. 85645701 (the “Emperia Application”). The Emperia Application was published for opposition on January 22, 2013.

On February 11, 2013, The University of Tennessee, requested a ninety day extension of time to oppose the Emperia Application, which was granted by the TTAB. On February 20, 2013, River Light requested a thirty day extension of time to oppose the Emperia Application, which was also granted. On March 15, 2013, River Light requested a sixty day extension of time to oppose the Emperia Application, which was also granted by the TTAB.

During this time the Applicant and Opposer were engaged in settlement negotiations. Indeed, on May 21, 2013, Cameron Hopkins, counsel for Emperia who filed the Motion to Set Aside the Default, consented to an additional extension of time for River Light to oppose the Emperia Application pending settlement negotiations. A true and correct copy of that email from Cameron Hopkins is attached as Exhibit A to the Declaration of Mary Grieco, dated November 4, 2013 (the “Grieco Decl.”), which is being filed herewith. As such, on May 22, 2013, River Light filed a sixty day request for an extension of time to oppose the Emperia Application, with the consent of Applicant, which was also granted.

On July 22, 2013, Opposer filed its opposition against the Emperia Application and mailed a copy of the Notice of Opposition to Emperia at the address listed on its trademark application, as set forth on the Certificate of Service attached to the Notice of Opposition, and as required by the TBMP. *See* TBMP ¶ 309.02(c). The Notice of Opposition was never returned to Opposer’s counsel. *See* Grieco Decl. ¶ 3.

On July 22, 2013, the TTAB issued a notice that the Opposition had been filed, which

included the date the Answer was due, among other things. A copy of this document was mailed to Applicant by the TTAB at the address listed on its trademark application.

The Answer to the Notice of Opposition was due on August 31, 2013; however, no answer was filed, and no motion to extend Applicant's time to answer was timely made. On September 16, 2013, the TTAB issued an order entering a Notice of Default against Applicant and allowing Applicant thirty days to show cause why judgment by default should not be entered against Applicant in accordance with Fed. R. Civ. P. 55(b). The TTAB copied Applicant's counsel, Cameron Hopkins, on the Notice of Default, presumably because he was the attorney of record in the unrelated The University of Tennessee action, Opposition No. 91210740 (the "Tennessee Action"). Notably, the Notice of Opposition in the Tennessee Action, was also mailed to the address listed on Applicant's trademark application and is the same address to which Opposer's Notice of Opposition was sent; however, Applicant did not respond to that Notice of Opposition. *See Grieco Decl., Exhibit B.*

On October 15, 2013, Applicant filed a last-minute Motion to Set Aside the Entry of Default, claiming that "for unknown reasons, Anne Sophie did not receive notice of the Riverlight Opposition until it received the Notice of Default by mail on or about September 22, 2013." This seems unlikely because both Opposer and the Board mailed documents about the proceeding to Applicant, and Applicant was apparently receiving other documents at that address. Moreover, Applicant was aware that Opposer had filed extensions of time to oppose the Emperia Application, and Applicant had even consented to a further extension pending settlement discussions. Therefore, Applicant could and should have checked online to determine if an opposition had been filed against it. It is further unlikely that Applicant was unaware of the Opposition when it was in the process of disputing the Tennessee Action. Surely when filing

documents or reviewing the docket for the Tennessee Action, someone at Applicant's office or Applicant's counsel would have come across the Opposition.

Based on the foregoing, Applicant has not shown good cause why it failed to answer the Notice of Opposition, and as such, the Motion should be denied in its entirety.

ARGUMENT

Pursuant to Fed. R. Civ. P. 55(c), the court may set aside an entry of default for good cause. *See* TBMP 312.02. In order to show good cause, the Applicant must show the following: (1) the delay in filing an answer was not the result of willful conduct or gross neglect on the part of the defendant, (2) the plaintiff will not be substantially prejudiced by the delay, and (3) the defendant has a meritorious defense to the action. *Id.* Entry of default judgment may be necessary in some cases. *Id.*

Here, Applicant's failure to answer was due to willful or gross neglect. Applicant merely relies on the statement that "[f]or some unknown reason, Anne Sophie simply did not receive notice of the Riverlight Opposition until it received the Notice of Default." *See* Motion at p. 3. This does not seem plausible given the circumstances outlined above. Applicant was aware that Opposer had filed extensions of time to oppose the Emperia Application – indeed Applicant's counsel even consented to a final extension - and Applicant knew that the matter had not settled, yet Applicant did not check as to whether a proceeding had been filed against it. This amounts to willful or gross neglect, and as such, the Motion should be denied in its entirety on this basis alone.

Moreover, Opposer will be prejudiced by the delay. If the matter is allowed to go forward, Opposer will be forced to expend additional fees and time on this matter, even though the time to answer has already passed due to Applicant's willful or gross neglect.

Finally, Applicant does not have a meritorious defense, as the as set forth in the Notice of Opposition.

Based on the foregoing, Applicant's Motion should be denied in its entirety.

CONCLUSION

Based on the foregoing, Opposer's Motion for Reconsideration of the Boards October 30 Order should be granted, Applicant's Motion to Set Aside Entry of Default should be denied in its entirety, and a default should be entered against Applicant.

Dated: November 26, 2013

OLSHAN FROME WOLOSKY LLP

By: 

Mary L. Grieco
Safia A. Anand
Park Avenue Tower
65 East 55th Street
New York, New York 10022
(212) 451-2300
Attorneys for Opposer

CERTIFICATE OF SERVICE

I hereby certify that on this day, November 26, 2013, a true and correct copy of the foregoing document entitled:

**MOTION FOR RECONSIDERATION OF THE BOARD'S OCTOBER 30, 2013 ORDER
AND OPPOSITION TO MOTION TO SET ASIDE ENTRY OF DEFAULT**

was served upon Applicant's Counsel by prepaid, first class U.S. mail, addressed as follows:

Cameron A. Hopkins, Esq.
Law Offices of Cameron A. Hopkins, PC
865 S. Figueroa Street, Suite 1388
Los Angeles, California 90017


ANNA BIVONA

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

In the Matter of Trademark Application No. 85/645,701

For the Mark:




Date Published: January 22, 2013

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RIVER LIGHT V, L.P.,	:	
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Opposer,	:	
	:	
v.	:	Opposition No.: 91211687
	:	
ANNE SOPHIE, INC. DBA EMPERIA	:	
	:	
Applicant.	:	
	X	

DECLARATION OF MARY L. GRIECO AND EXHIBITS
IN SUPPORT OF OPPOSITION TO MOTION TO SET ASIDE ENTRY OF DEFAULT

Mary L. Grieco, being warned that willful false statements and the like are punishable by fine or imprisonment, or both, under Section 1001 of Title 18, United States Code, states:

1. I am an attorney licensed to practice law in New York, California and Washington, D.C. I am an attorney for the Opposer, River Light V, L.P. ("Opposer"). I submit this declaration in support of Opposer's Opposition to Applicant's Motion to Set Aside Entry of Default, which is being filed herewith.

2. Applicant was aware that Opposer was likely to file a Notice of Opposition against Applicant's  application, Serial No. 85/645,701 (the "Emperia Application"), as the parties were in settlement negotiations. Indeed, on May 21, 2013, Cameron Hopkins, current counsel for Emperia, consented to an additional extension of time for River Light to oppose the Emperia

Application pending settlement negotiations. A true and correct copy of that email from Cameron Hopkins is attached hereto as Exhibit A. As such, Applicant and/or its counsel could and should have checked online to determine if an opposition had been filed if they did not receive a copy of the Opposition, as they were aware that the matter had not settled.

3. Opposer served the Notice of Opposition on the Applicant at the address designated in the Emperia Application, as required by the TBMP. *See* TBMP ¶ 309.02(c). The Notice of Opposition was never returned to our offices.

4. The TTAB copied Applicant's current counsel, Cameron Hopkins, on the Notice of Default, presumably because he was the attorney of record in the unrelated The University of Tennessee action, Opposition No. 91210740 (the "Tennessee Action"). Notably, the Notice of Opposition in the Tennessee Action, was also mailed to the address listed on Applicant's trademark application and is the same address that Opposer's Notice of Opposition was sent to. A true and correct copy of the Certificate of Service, which was attached to the Notice of Opposition in the Tennessee Action is attached hereto as Exhibit B.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

Executed on this 26th day of November 2013 at New York, New York.



Mary L. Grieco

EXHIBIT A

From: <cameron@hoplawfirm.com>
Date: May 21, 2013, 2:55:59 PM EDT
To: Cindy Chan <cchan@blakelylawgroup.com>
Subject: RE: Emperia

Cindy,

Top's will stipulate to an extension of time for TB to file its opposition pending settlement discussions.

Please let me know what other disclosures you need.

Thanks,
Cameron

*Cameron A. Hopkins
A Professional Corporation
865 S. Figueroa Street, Suite 1388
Los Angeles, California 90017
213 892.9957
213 892.9934 (facsimile)*

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EXHIBIT B

CERTIFICATE OF SERVICE

This is to certify that a true and exact copy of the foregoing NOTICE OF OPPOSITION is being served on Applicant at its correspondence address of record by first class mail, postage prepaid:

Anne Sophie, Inc.
2050 E 49th St.
Vernon, CA 90058-2802

Date: May 22, 2013

s/Wade R. Orr/
Wade R. Orr


CERTIFICATE OF SERVICE

I hereby certify that on this day, November 24, 2013, a true and correct copy of the foregoing document, entitled

**DECLARATION OF MARY L. GRIECO AND EXHIBITS
IN SUPPORT OF OPPOSITION TO MOTION TO SET ASIDE ENTRY OF DEFAULT**

was served upon Applicant's counsel by first class mail, addressed as follows:

Cameron A. Hopkins, Esq.
Law Offices of Cameron A. Hopkins, PC
865 S. Figueroa Street, Suite 1388
Los Angeles, California 90017


ANNA BIVONA